

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

**AMERICAN FIRE AND CASUALTY
COMPANY,**

No. 3:21-cv-05601

**SKOUNTRIANOS DDS MS D/B/A
ORTHODONTIC EXCELLENCE,**

Defendant.

COMES NOW Plaintiff American Fire & Casualty Company, by and through its attorneys of record, Sarah L. Eversole and John M. Silk of Wilson Smith Cochran Dickerson, and, by way of Complaint, alleges as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff American Fire and Casualty Company (“American Fire”) is a company organized under the laws of the State of New Hampshire with its principal place of business at 175 Berkeley Street, Boston, Massachusetts. American Fire is authorized to do business and does business in the State of Washington and in Pierce County, Washington. At all material

**COMPLAINT FOR COURT-APPOINTED
UMPIRE FOR CONTRACTUAL APPRAISAL
(Cause No. 3:21-cv-05601) – 1
3950749 / SLE /1455.097 /**



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times hereto, American Fire provided a commercial fire insurance policy to Defendant SKOUNTRIANOS DDS, MS d/b/a ORTHODONTIC EXCELLENCE (hereinafter “Skountrianos”), covering its dental business.

2. Defendant Skountrianos is a Washington entity with its principal place of business in Puyallup, Washington.

3. This Court has jurisdiction over the subject matter of and persons to this litigation pursuant to 28 U.S.C. §1332 (a) because this action is between citizens of different states and the amount in controversy is nearly \$1,000,000, in excess of the statutory minimum. Further, the Court has jurisdiction pursuant to RCW 7.24.010, as the relief requested is declaratory in nature and there is a justiciable controversy between the parties. Venue is appropriate in USDC, Western District, at Tacoma pursuant to 28 U.S.C. §1391(b)(1) because the defendant dental office is located in Puyallup, Pierce County, Washington, which is located in this District.

II. FACTS

4. American Fire issued Policy BZA (19) 57 74 95 94 to Skountrianos, effective May 1, 2018 to May 1, 2019, affording fire insurance covering the insured's business. (hereinafter "the Policy").

5. On September 9, 2018, there was a fire to the Skountrianos dental business and the building collapsed.

6. Within two weeks of the loss, Skountrianos moved into a new location approximately 2 miles from the first location. The second location was 200 square feet smaller than the old space. Skountrianos signed a three year lease, paying less rent than the original location. Unbeknownst to American Fire prior to adjustment of the business income claim,

1 Skountrianos had also purchased the new location, and was leasing the dental equipment at this
2 location to itself.

3 7. The Policy provided coverage for business personal property, tenant build out,
4 and business income interruption coverage for up to 12 months.

5 8. American Fire made advances on the anticipated claims, including an advance
6 of \$200,000 to Skountrianos for the potential business income loss.

7 9. The business personal property and tenant build out claims paid and resolved
8 with no dispute.

9 10. Skountrianos disagreed with American Fire' measurement of the covered
10 amount of Business Income (and Extra Expense) loss and American Fire and Skountrianos
11 could not reach agreement on the amount owing for Business Income (and Extra Expense).

12 11. On or around January 31, 2021, Skountrianos invoked the Policy's contractual
13 Appraisal provision via email, in order to resolve the parties' dispute as to the amount of covered
14 loss under the Business Income (and Extra Expense) Coverage Form.

15 12. The contractual Appraisal provision in the Policy provides as follows:

16 **Appraisal**

17 If we and you disagree on the amount of loss, either
18 may make a written demand for an appraisal of the
19 loss. In this event, each party will select a competent
20 and impartial appraiser.

21 The two appraisers will select an umpire. If they
22 cannot agree, either may request that selection be
23 made by a judge or a court having jurisdiction. The
24 appraisers will state separately the amount of loss. If
they fail to agree, they will submit their differences
to the umpire. A decision agreed to by any two will
be binding. Each party will:

25 a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

American Fire Policy, Business Income (and Extra Expense) Coverage Form, Form No. BP 00
03 07 13, ¶ D.1. *Loss Conditions – Appraisal*, at p. 28 of 61. A Copy of the Policy is attached
as **Exhibit A** to this Complaint.

13. The Policy's Duties In The Event of Loss provision reads, in relevant part:

3. Duties In The Event Of Loss Or Damage

a. You must see that the following are done in the event of loss or damage to Covered Property:

* * *

6. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

* * *

8. Cooperate with us in the investigation or settlement of the claim.

Id. at *Loss Conditions – Duties In The Event of Loss*, at p. 28 of 61.

14. Skountrianos advised that its selected appraiser was Luke Fisher of Veritas Forensic Accountants.

15. American Fire agreed to contractual appraisal and advised that its selected appraiser was forensic accountant Mike Vannucci of Meaden & Moore.

16. The parties' selected Appraisers did not agree on the proper measure of the loss.

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17. The parties Appraisers also could not agree on a suitable Umpire.

18. Given the nature of the dispute, American Fire's appraiser requires that the selected umpire have direct experience with measuring economic damages and business interruption for commercial property losses. Skountrianos' appraiser prefers an umpire with more traditional mediator-type experience, and does not want a CPA.

19. In accordance with the policy, American Fire's appraiser has requested the selection be made by a court.

20. Prior to the commencement of this suit, American Fire made one last attempt at finding mutually acceptable and qualified umpires that both appraisers would agree on. This effort was unsuccessful, requiring the subject Complaint.

III. CAUSE OF ACTION

21. American Fire re-alleges and incorporates each and every allegation above.

22. **Equitable Relief.** American Fire is entitled to a Court-appointed Umpire as an equitable remedy as a necessary condition for fulfillment of American Fire's rights under the contract of insurance (the "Policy"). The umpire should be a qualified CPA with direct experience in measuring economic damages or business interruption claims for commercial property losses.

IV. PRAYER FOR RELIEF

Wherefore, American Fire prays for relief against Defendant Skountrianos, as follows:

1. For the Court to appoint a suitable Umpire with sufficient experience and expertise in handling the type of matter at issue, with sufficient legal and dispute resolution experience to fully carry out the duties of an Umpire under the insurance policy's contractual Appraisal provision;

1 2. For all costs and attorneys' fees permitted by law; and
2 3. For any and all further relief as the Court deems just and equitable to ensure the
3 parties' contractual rights under the insurance policy are fulfilled.
4

5 DATED this 19th day of August, 2021.

6 **WILSON SMITH COCHRAN DICKERSON**

7 *s/Sarah L. Eversole* _____

8 *s/John M. Silk* _____

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